



Paper No. 15

HESKA CORPORATION
INTELLECTUAL PROPERTY DEPT.
1613 PROSPECT PARKWAY
FORT COLLINS, CO 80525

COPY MAILED**MAY 28 2002****OFFICE OF PETITIONS**

In re Application of :
Gek-Kee Sim, Shumin Yang, :
Matthew J. Dreitz and :
Ramani S. Wonderling :
Application No. 09/451,527 :
Filed: December 1, 1999 :
Attorney Docket No. IM-2-C2 :
Title: CANINEY IL-13 :
IMMUNOREGULATORY PROTEINS AND USES :
THEREOF :

DECISION ACCORDING STATUS
UNDER 37 C.F.R. §1.47(a)

This is in response to the petition, filed May 22, 2000, under 37 CFR 1.47(a). This petition was recently forwarded to the Office of Petitions for consideration.

The petition under 37 CFR 1.47(a) is **GRANTED**.

The above-identified application was filed on December 1, 1999, without the statutory basic filing fee, with additional claim fees due, and without an executed oath or declaration. Gek-kee Sim, Shumin Yang, Matthew J. Dreitz and Ramani Wonderling were named as joint inventors. Accordingly, on February 18, 2000, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring the missing fees, an executed oath or declaration, and the surcharge under §1.16(e) for late filing. This Notice set a two-month period for reply with extensions of time obtainable under §1.136(a).

In reply, rule 47 applicants filed the instant petition, and submitted a check in the amount of \$1,744.00 to cover the petition fee (\$130), the surcharge under §1.16(e) (\$130), the basic filing fee (\$690), the additional claim fees due (\$684); and petition for one-month extension of time and fee (\$110) to make the reply timely. As the basic filing fee for a large entity on May 22, 2000 was \$760.00, pursuant to petitioner's authorization, the deficiency of \$70 was charged to Deposit Account No. 08-1930. Applicants assert that acceptance of this declaration under §1.47 is proper because inventor Sim refuses to join in the application. In support thereof, applicants submitted *inter alia* a declaration of Susan A. Gordon with documentary evidence of the presentation of the application papers for signature to inventor Sim by Federal Express Delivery.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor(s).

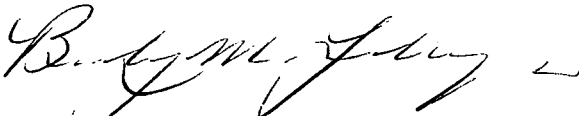
By declaration of Susan Gordon and supporting documentary evidence, applicants have shown that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor, and that by her conduct, inventor Sim has refused to join in the application. Accompanying the petition was a declaration executed by joint inventors Yang, Dreitz and Wonderling on behalf of themselves and on behalf of non-signing joint inventor Sim. This declaration filed May 22, 2000 has been reviewed and found in compliance with §1.63. Moreover, the petition submitted included the petition fee and a statement of the last known address of inventor Sim.

In view thereof, this application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to Technology Center 1636 for examination.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy